141-260

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~427~~. 341 51

JOHN N. A. GRISWOLD, APPELLANT,

vs.

ROWLAND G. HAZARD, ROWLAND HAZARD, ANNA HAZARD, AND LYDIA TORRY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED JUNE 22, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 627.

JOHN N. A. GRISWOLD, APPELLANT,

vs.

ROWLAND G. HAZARD, ROWLAND HAZARD, ANNA HAZARD, AND LYDIA TORRY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 17, 1889.

1 *Bill in Equity.*

Circuit Court U. S., R. I. Distr. Eq. No. 2136.

JOHN N. A. GRISWOLD
vs.
ROWLAND G. HAZARD *et als.* } No. 2.

2 Be it remembered that on the 12th day of June, A. D. 1885, the following bill in equity was filed in the clerk's office of the United States circuit court for the first circuit and district of Rhode Island:

JOHN N. A. GRISWOLD *vs.* ROWLAND HAZARD *et al.*

3 *Bill of Complaint.*

To the judges of the circuit court of the United States for the district of Rhode Island:

John N. A. Griswold, of the city, county, and State of New York, and a citizen of the State of New York, brings this his bill against Rowland G. Hazard and Rowland Hazard, both of South Kingston, in the State of Rhode Island; Anna Hazard and Lydia Torrey, both of Newport, in the said State of Rhode Island, and all of whom are citizens of the said State of Rhode Island; and thereupon your orator complains and says that on the third day of March, 1883, the said defendants commenced an action at law against your orator in the supreme court of the State of Rhode Island to recover the penal sum mentioned in a certain writing obligatory, a copy of which is hereto annexed, marked Exhibit A, and hereby made a part hereof; which said suit was thereafter removed by your orator to the circuit court of the United States for the district of Rhode Island and is now pending therein; and your orator prays that all the proceedings had in said suit may be taken and considered as part of this bill.

Further complaining, your orator says that the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, mentioned in the said writing obligatory, is a certain suit in equity commenced on the 22d day of August, 1868, by the said Isaac P. Hazard as a stockholder in the Credit Mobilier of America, a corporation incorporated under the laws of the State of Pennsylvania, in the supreme court of the State of Rhode Island, sitting in Newport within and for the county of Newport, against the said Thomas C. Durant (to which the other obligees named in the said bond afterwards became parties complainant), alleging that the said Thomas C. Durant, while vice-president of the said Credit Mo-

4 bilier of America and controlling its affairs, committed certain frauds upon the said corporation, and praying for an account of the same, to which suit in equity the said corporation and others were made parties defendant, and for more accurate information concerning said suit in equity the original bill therein is hereto annexed, marked Exhibit B, and hereby made a part hereof.

Further complaining, your orator says that thereafter, to wit, on the 17th day of November, A. D. 1875, the said Rowland G. Hazard filed his bill of complaint, in equity, in the court of common pleas (No. 2), in the city of Philadelphia, in the State of Pennsylvania, against the said Credit Mobilier of America and others, which said suit was afterwards removed to the circuit court of the United States for the eastern district of Pennsylvania, the same being the forum of the domicile of the said corporation, in which suit such proceedings were had that one Oliver Ames was appointed by said court receiver of all the goods, chattels, rights, and effects of the said corporation, and that thereafter the said receiver obtained from the said court authority to deliver to the said Thomas C. Durant a deed of release of all sums of money then due or owing or thereafter to become due, together with all manner of actions, causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity or otherwise howsoever, which it, the said Credit Mobilier, then had or which it should or might at any time or times thereafter have, claim, allege, or demand against the said Thomas C. Durant for or by reason or means of any matter, cause, or thing whatsoever from the beginning of the world to the day of the date of the said deed or writing of release, as by the said deed or writing of release, reference being thereunto had, will fully appear; and the said defendant says that afterwards, to wit, on the twenty-seventh day of October, A. D. 1881, the said Oliver Ames, acting by virtue of the said authority, and in consideration of the delivery to him by the said Thomas C. Durant of a deed conveying the title to certain lands mentioned in the said order authorizing the said release, did deliver to the said Thomas C. Durant a deed of release of all sums of money then due and owing or thereafter to become due, together with all manner of actions, causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever, which the said Credit Mobilier of America had against him, the said Thomas C. Durant, for or by reason or means of any matter, cause, or thing whatsoever from the beginning of the world to the date of the said deed or writing of release.

And your orator charges, upon information and belief, that the said suit in equity in the supreme court of Rhode Island has, from its commencement, been wholly controlled by the said Rowland G. Hazard.

And your orator further shows that, notwithstanding the delivery of the said deed or writing of release, the said defendants proceeded in the said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, and thereupon the said supreme court of Rhode Island rendered the decree mentioned in the declaration in the said action at law now pending in this court, and refused to allow the said Thomas C. Durant to set up the said deed or

writing of release as a bar to the entering of the said decree, on the ground, as alleged by the said defendants, that he was in contempt of the said court for violation of one of its decrees rendered therein.

And your orator further shows that after the delivery of the said deed or writing of release he requested the said defendants to
6 deliver up the said writing obligatory to be cancelled, and to abstain and desist from suing your orator at law to recover the penal sum thereof, with which just and reasonable requests the said complainant well hoped that the said defendants would have complied, as in justice and equity they ought to have done.

But now so it is, may it please your honors, the said defendants wholly neglect and fail so to do and pretend that, notwithstanding the said deed or writing of release, the said writing obligatory binds your orator to the payment of the decree rendered in said suit in equity against the said Thomas C. Durant to the extent of the penal sum of the said writing obligatory, and are urging their said suit at law upon the said writing obligatory against your orator; all of which actings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator. In tender consideration whereof and forasmuch as your orator is without adequate remedy in the premises by the strict rules of the common law and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable—

To the end, therefore, that the said defendants may answer the premises, and that the said bond may be delivered up to your orator to be cancelled; that the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey may be restrained by the writ of injunction of this court from further proceeding with the said action of law, now pending in this court, in which the said defendants are plaintiffs and your orator is defendant, and from enforcing the said writing obligatory in any manner, and that your orator may have such other and further relief as to your honors may seem meet and the justice of the case shall require—

May it please your honors to grant unto your orator, not only a writ of injunction, issuing out of and under the seal of this
7 honorable court, to be directed to the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey to restrain them and each of them from further prosecuting the said action at law upon the said bond or in any manner enforcing the same, but also a writ of subpœna, to be directed to the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey, thereby commanding them and each of them, at a certain time and under a certain penalty, to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises (their oaths thereto being hereby waived), and further to stand to, perform, and abide such further orders, directions, and decrees herein as to your honors shall seem meet.

JOHN N. A. GRISWOLD.

SAM'L R. HONEY,
Compl't's Sol'r.

STATE OF RHODE ISLAND, } sc:
Newport, }

On this — day of ——, 1885, before me personally appeared John N. A. Griswold and made oath that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on his information and belief, and except also as to conclusions of law, and as to those matters and conclusions he believes them to be true.

—— ——.

8 EXHIBIT "A."

Know all men that we, Thomas C. Durant, as principal, and John N. A. Griswold and S. Dexter Bradford, as sureties, are firmly bound to Isaac P. Hazard, Rowland Hazard, Rowland G. Hazard, Elizabeth Hazard, Elizabeth Hazard, trustee; Anna Hazard, Mary P. Hazard, Lydia Torrey, Sophia Vernon, and Anna Horner in the sum of fifty-three thousand seven hundred and thirty-five dollars, to be paid said obligees, their executors, administrators, or assigns; to which payment we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, hereby.

Sealed with our seals and dated this 24th day of August, A. D. 1868.

The condition of this obligation is that said Thomas C. Durant shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others now pending in said court within and for the county of Newport.

THOMAS C. DURANT. [L. S.]
J. N. A. GRISWOLD. [L. S.]
S. D. BRADFORD. [L. S.]

Executed and delivered in presence of—
FRANCIS P. PECKHAM, JR.

Endorsed: Isaac P. Hazard *et als.* and Thomas C. Durant *et als.* *Ne exeat* bond. Filed Aug. 24, 1868. Thomas W. Wood, clerk.

9 EXHIBIT "B."

NEWPORT, *sc:*

Supreme Court. September Term, 1868.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } Bill in Equity, No. 2.

To the honorable justices of the supreme court of the State of Rhode Island within and for the county of Newport:

Isaac P. Hazard, of the city and county of Newport, in the State of Rhode Island, brings this his bill of complaint against Thomas C. Durant, Oliver Ames, Benjamin E. Bates, John Duff, Cornelius S. Bushnell, Sidney Dillon, Henry S. McComb, and "The Credit Mobilier of America," and "The Union Pacific Railroad Company."

And thereupon, humbly complaining for himself as one of the stockholders in the said defendant corporation, "The Credit Mobilier of America," as also for other such stockholders in said corporation as may become parties to this his bill of complaint, your orator says that the said defendant corporation, The Credit Mobilier of America, was created, under the laws of the State of Pennsylvania, for the purposes and with the powers fully set forth in its act of incorporation and other acts relating thereto, copies of which, marked Exhibit A, are hereto annexed and made part of this bill of complaint.

That the said defendant corporation, The Union Pacific Railroad Company, was created by acts of Congress for the purposes and
10 with the powers fully set forth therein, copies of which said acts, marked B, are hereto annexed and made part of this bill of complaint.

That your orator from August, 1865, was a stockholder in the Credit Mobilier of America aforesaid, and from April, 1866, in the Union Pacific Railroad Company aforesaid, and since said dates, respectively, was and still is a stockholder in each of said corporations, and now owns and holds shares in the said Credit Mobilier of America of the value at par of thirty-eight thousand dollars, and shares in the said Union Pacific Railroad Company of the par value of —— dollars.

And your orator, further complaining, says that on the 16th day of August, 1867, the said defendant corporation, The Union Pacific Railroad Company, made a contract in writing with Oakes Ames, of North Easton, in the State of Massachusetts, for certain work to be done and material to be furnished in the construction of a large portion of its railroad and telegraph line at certain prices and on certain terms and conditions fully set forth in said contract, a copy of which, marked C, is hereto annexed and made part of this bill of complaint.

That on the 17th day of October, 1867, the said Oakes Ames, by

an agreement in writing between himself, as party of the first part, the said Thomas C. Durant, Oliver Ames, John B. Alley, Sidney Dillon, Cornelius S. Bushnell, Henry S. McComb, and Benjamin E. Bates, of the second part, and the said Credit Mobilier of America, of the third part, assigned said contract with the said Union Pacific Railroad Company of August 16, 1867, to the said parties of the second part in trust for various purposes, and especially stipulating that the profits arising from said contract so assigned should be paid to the then stockholders of the said Credit Mobilier of America in proportion to the shares therein held by them, respectively, as fully set forth in said agreement or deed of trust, a copy of which, marked Exhibit D, is hereto annexed and made part of this bill of complaint.

11 And your orator avers that large profits, in addition to those before mentioned as made by said Credit Mobilier, have been made under and by virtue of said contract so assigned, and the same and portions thereof have been paid over to some or all of the stockholders in the said Credit Mobilier of America entitled to the same by the said parties of the second part named in said Exhibit D, or by such of them as continue to act as trustees, and the said defendant, John Duff, who has been substituted as trustee under said agreement or trust deed in place of John B. Alley, therein named, as your orator is informed and believes.

That your orator has received a share of said profits, and that, as he is informed and believes and therefore charges, the said defendant, Thomas C. Durant, has received from said trustee a large share of the profits arising from said contract, the same having been paid to him as a stockholder in the said Credit Mobilier of America holding a great number of shares therein, and that, as your orator is informed and believes and therefore charges, the said Thomas C. Durant has become and is now the holder and nominal owner of a large amount of the stock and bonds of the said Union Pacific Railroad Company transferred and delivered to him by the said trustees as and for a part of his share in the profits aforesaid.

And your orator, further complaining, says that the said defendant, Thomas C. Durant, was, from the early part of the year 1864 until May 18, 1867, the president of the said defendant corporation, The Credit Mobilier of America, and had to a great extent the management and control of its affairs and the confidence of the trustees and directors thereof, and was able to direct and control its funds and finances, its payments and disbursements, and that the treasurer, clerks, and agents of said corporation were in the habit of paying and did pay as he directed any and all sums of money, and upon vouchers or without vouchers, as were by him ordered and directed.

12 And your orator further states that the said defendant, Thomas C. Durant, had no rightful power and authority to receive from the said corporation, its officers, agents, or servants, or to cause or direct to be paid by them, any sums of money as aforesaid, except for the use of the said corporation and to be applied in and about its legitimate business.

And your orator is informed and believes and therefore charges that the said Thomas C. Durant in all instances in procuring moneys from the said corporation, its treasurer, clerks, or agents, or in causing or procuring moneys to be paid by the said corporation, its treasurer or other officer or agent, whether to himself or to any other person, represented and pretended to the directors, officers, and agents of the said corporation that such moneys were required and were to be used and were used for the benefit of the said corporation and in and about its legitimate business, and that upon such representations, which were by the said corporation, its officers and agents, believed to be true, as your orator is informed and believes, he, the said defendant, Thomas C. Durant, did, between May, 1864, and January, 1868, receive and cause to be paid to himself and other persons on his orders and by his directions, of and from the funds and moneys of the said corporation, very large sums of money, amounting in the whole, as your orator believes and charges, to more than a quarter of a million dollars, which he deceitfully and fraudulently applied to his own uses and purposes.

And your orator further says that he is informed and believes that it appears by the books and records of the said corporation kept by its clerks and servants, and that in fact the said defendant, Thomas C. Durant, procured and caused to be paid to him and to others, for his use and benefit, by the officers and agents of the said corporation, and of and from its funds and moneys, the several sums of money specified in the schedule hereto annexed and marked
13 Exhibit E and made part of this bill, and at the dates and time therein mentioned, and that the said several sums of money hereinbefore mentioned were and each of them was so procured by the defendant, Thomas C. Durant, by means of his said office of president, and upon the false and fraudulent representations and pretence that the same had been by him paid for the benefit of said corporation or in the promotion of its business or the furtherance of its interest, or were required to be paid to and for the use of the said corporation or to some person or persons having just and legal claims and charges against the same for said amounts, respectively, and that each and all of said sums were required to be paid and were paid in and about the business of the said corporation and for its use and benefit; which representations, as your orator is informed and believes, were by the said corporation, its officers and agents, believed to be true, whereas your orator is informed and believes and therefore charges that the said representations and pretences so by the said defendant, Thomas C. Durant, made as aforesaid were and each of them was false and unfounded, and known to be so by the said Thomas C. Durant, and that each and all said sums of money hereinbefore mentioned were so procured by him with intent to defraud the said corporation, your orator, and other stockholders therein and to convert the same to his own use, and that the same were by the said defendant, Thomas C. Durant, so converted and applied to his own use.

And your orator further charges, on information and belief, that the said defendant, Thomas C. Durant, has never rendered any ac-

count showing a proper disbursement of the moneys hereinbefore mentioned or any part thereof for the benefit of the said corporation or in and about its business, nor furnished the said corporation with any proper vouchers for said moneys or of the payments thereof in its said business, nor in any manner accounted for or
14 paid over the same or any part thereof, and that he is indebted to the said corporation in the full amount of all said moneys, with interest.

And your orator, further complaining, says that between October, 1864, and January, 1868, the said defendant, Thomas C. Durant, paid to the said corporation, the Credit Mobilier of America, and was credited on its books with large sums of money as paid upon his subscriptions to its capital stock or the subscriptions of other persons thereto transferred to him, and that large parcels of said stock have been by him transferred to or into the names of other persons upon the books of said corporation, and that, as your orator is informed and believes, there are now standing on the books aforesaid, in the name of the said Thomas C. Durant, 5,658 shares of said stock, of the par value of $565,800, for which he is credited upon said books with full payment therefor, and said stock is of the full actual value aforesaid, or very near to the said amount.

And your orator is informed and believes and therefore charges that a very large portion of said moneys so as aforesaid fraudulently converted or procured by the said defendant, Thomas C. Durant, as aforesaid, has been by him directly or indirectly appropriated and applied to the payments for said stock so by him held as aforesaid; and your orator is advised and therefore claims and insists that the said corporation and its stockholders have an equitable lien upon said stock of the said Thomas C. Durant to the amount of the moneys so by him fraudulently applied to payments therefor as aforesaid, and that the said stock and its proceeds are the rightful property of said corporation, the said Durant, an agent of said corporation, having, in breach of his trust, invested their moneys therein.

And your orator, further complaining, says that the said defendant, Thomas C. Durant, was active in promoting the organization of the said corporation, the Credit Mobilier of America, and
15 that on or about the 24th day of November, 1864, he presented to the officers and agents of the said corporation a claim for forty-six thousand dollars as for so much money paid to one H. C. Crane for the expenses incident to such organization, and caused and procured himself to be credited upon the books of the said corporation with said amount, as your orator is informed and believes and therefore charges, in part payment of ninety-five per cent. on five hundred shares in the capital stock of said corporation, and the same was allowed to him by and in behalf of the said corporation as and for so much money paid thereto.

That the said Henry C. Crane was and ever since has been a confidential clerk in the employ of the said Thomas C. Durant; and your orator is informed and believes and therefore charges that no sum whatever was claimed by or paid to the said Henry C. Crane

for any service or disbursements in and about the organization aforesaid, and that his name, if used in any way therein, was so used for the sole benefit of the said Thomas C. Durant and by way of cover and concealment of the connection of the said Thomas C. Durant with said transaction.

And your orator is further informed and believes that the whole expenses and disbursements connected with the said preliminary organization of the said corporation as aforesaid did not exceed the sum of sixteen thousand dollars, and that at least thirty thousand dollars of the amount so claimed by the said defendant, Thomas C. Durant, and credited and allowed to him as aforesaid was falsely and fraudulently claimed, and that, at most, he was entitled only to be credited with said sixteen thousand dollars, and that he is justly indebted to the said corporation in said sum of thirty thousand dollars, with interest thereon, and that the same is an equitable lien and charge upon the shares of the said Thomas C. Durant in the said corporation to that amount, and that stock of the amount of said thirty thousand dollars, with the dividends, income, and
16 profits upon and from stock since said pretended purchase by said Durant and which may hereafter accrue therefrom, are the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that prior to the organization of the said corporation as aforesaid and before it was capable of contracting with said corporation, the Union Pacific Railroad Company, and while its said organization was in contemplation, for the purpose of aiding in the construction of said company's railroad, your orator is informed and believes that the said Thomas C. Durant, consulting and professing to act in concert with others, who subsequently became members of and stockholders in the said corporation upon its organization being completed as aforesaid, and being then vice-president of and active in the management of said railroad company, caused and procured a contract to be made between the said Union Pacific Railroad Company and one Herbert M. Hoxie for the doing of certain work in and about the construction of said railroad, for the prices therein agreed to be paid therefor.

That the said Hoxie was but the instrument and agent of the said Thomas C. Durant and had no interest in said contract and no control over the same, and never did any work under the contract or advanced any moneys therefor, but his name was used therein only as a cover and to conceal the connection of the said Durant with said transaction, he, the said Durant, representing at the time to his associates and the directors and stockholders of the Credit Mobilier of America aforesaid and assuring them that the said contract was in truth and in fact taken and held for the benefit of the said last-mentioned corporation, and to be assigned and transferred to such corporation when it should by organization under its charter become capable to accept and undertake the same.

17 That, as your orator is informed and believes, prior to March, 1865, when said contract was in form assigned to and assumed by the said corporation, the Credit Mobilier of America, there had not

been to exceed one hundred thousand dollars expended thereon or earned under the same, and that said one hundred thousand dollars had been advanced and paid by the said corporation, its agents or stockholders, and in its behalf and for its benefit, and not by the said Hoxie or the said Durant.

That on or about the 10th day of May, 1865, the said Durant presented to said corporation a claim for four hundred and twenty thousand seven hundred and seventy dollars as and for so much money due and owing upon said contract to the said Hoxie for work done, materials furnished, and expenditures made prior to the assignment thereof as aforesaid; and did falsely and fraudulently represent and pretend to the officers and agents of said corporation that said amount was justly due for actual expenditure and for money actually earned upon and under said contract prior to said assignment; and did fraudulently cause and procure said sum to be credited to him, the said Durant, upon the books of the said corporation as paid by him on that day upon and in part payment for five thousand nine hundred shares of the capital stock of the said corporation; and said sum, without lawful authority and by the fraudulent act and procurement of the said Durant, was so credited and allowed to him as and for so much money paid upon his said stock, and he has had the full benefit thereof; and your orator claims and insists that the said Durant is justly indebted to the said corporation in the full amount of said sum, with interest thereon, and that the same is an equitable lien and charge upon the shares in the capital stock of the said corporation owned and held by him, and that the said stock so purchased by the said Durant, with all the earnings, dividends, and income, and rights thereof, is the rightful property of said corporation and of its stockholders.

18 And your orator, further complaining, says that on or about the 20th day of November, 1866, the said defendant Durant caused and procured to be paid by the said corporation, the Credit Mobilier of America, upon the drafts of one A. N. Gesner, sixty thousand dollars under the false and fraudulent pretence and representation that the said draft was drawn upon the said corporation for some claim or demand justly due and owing by the said corporation—

Whereas in truth and in fact, as your orator is informed and believes and therefore charges, said draft was not so drawn or based on any legal claim, but was drawn and used, by direction and for the benefit of the said Durant, as a means whereby he might obtain that amount from the said corporation without consideration and to be used by him and applied to his own purposes in fraud of the said corporation and of your orator, and said sum was, in fact, received by the said Durant without consideration and by him applied in whole or part payment for his stock in the said corporation, and said sum was, on the day last aforesaid, by his fraudulent act and procurement, credited to his stock account on the books of the said corporation, and the said Durant has had the full benefit thereof; and your orator claims and insists that the said Durant is justly indebted to the said corporation in the amount

aforesaid, with interest thereon, and that the same is an equitable lien and charge upon the stock by him held in the said corporation, and that the stock purchased with said money, with all the earnings, dividends, income, and rights thereto appertaining or which have been or may be derived therefrom, are the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that he is informed and believes and therefore charges that the pecuniary condition of the said defendant Durant is precarious; that he is and for
19 a long time has been largely engaged in hazardous speculations and financial operations, and has sustained very heavy losses and is liable to sustain other losses, and your orator is fearful that any recovery had against him could not be collected by execution or other ordinary process of law, and that the said Durant is about to depart out of the State and out of the jurisdiction of this court; that the said corporation, the Credit Mobilier of America, has earned and divided among its stockholders large dividends upon the shares in its capital stock held and owned by them, respectively, said dividends having been payable and actually paid in money and in stock and bonds of the said corporation, the Union Pacific Railroad Company, large amounts of which have been assigned to the said defendant Durant as and for his share of dividends and earnings upon the stock so as aforesaid held and owned by him in the said Credit Mobilier of America, and that he has received bonds of the said Union Pacific Railroad Company as and for such dividends to a very large amount, exceeding, as your orator is informed and believes, seven hundred thousand dollars, and has also received as and for such dividends stock of the said Union Pacific Railroad Company to the amount of nearly two million dollars, a large amount of which said stock is now standing in the name of the said Durant on the books of the said last-named corporation.

And your orator claims and insists that the said corporation, the Credit Mobilier of America, and your orator and others, stockholders therein, have an equitable lien and charge upon said stock and bonds so issued to the said Durant as and for dividends as aforesaid, for any amount which may be found due from him to them, or either of them, or to the said corporation, for or in respect to the causes of action mentioned in this bill of complaint, and that such lien should be enforced by decree of this honorable court, and that the said Durant should be directed to assign and convey to
20 said corporation all stock, bonds, and money heretofore received by him as the proceeds of said stock so purchased by him with the proper moneys of said corporation.

And your orator further claims and insists that each and all said sums of money, shares, and stock and bonds as aforesaid are justly due and belong to the said corporation, the Credit Mobilier of America, and to your orator and others, stockholders therein, and that the said defendant, Durant, is justly indebted to the said corporation and to your orator and others, stockholders therein, in the full amount of said sum and value of said shares, stock, and bonds, and that the same are an equitable lien and charge upon said con-

tract and agreement in the hands of the said defendants, trustees as aforesaid, and the shares, bonds, and dividends and earnings received or to be received thereon or therefrom by the said trustees to the extent of the interest of the said defendant, Durant, therein, as hereinbefore fully stated and charged, and that the interest of said Durant in said agreement and trust deed and in the proceeds therefrom, so far as they purport to belong to or to be payable to the said Durant, are the rightful property of the said corporation and of its stockholders.

And your orator had well hoped that the said defendant corporation, The Credit Mobilier of America, would protect the rights and interest of its stockholders in the premises and, by proper proceedings at law or in equity, compel the said defendant, Thomas C. Durant, to account for said moneys wrongfully and fraudulently converted to his own use and withheld from said company as aforesaid, and that he would account for and pay over the same, and that said corporation would compel the said Durant to transfer all stock, bonds, moneys, and other rights and interest aforesaid procured with and by the proper moneys of said corporation to the same and to its stockholders; but now so it is, may it please your honors, that the said defendants, though requested so to do, have wholly
21 neglected and refused to comply with these reasonable expectations and requests of your orator; all of which actings, doings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is entirely remediless according to the rules of the common law, and can only have relief in a court of equity—

To the end, therefore, that the said defendants may, upon their several and respective corporal oaths, full, true, direct, and perfect answers make, the complainants hereby waiving said Durant's oath thereto, to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were here repeated and they thereunto distinctly interrogated, and that not only as to their knowledge and remembrance, but also as to the best of their knowledge, information, and belief;

And that the said defendant, Thomas C. Durant, may come to a fair and just account with the said defendant corporation, The Credit Mobilier of America, and with your orator of and concerning all and singular the sums of money, stock and shares in capital stock, and bonds as aforesaid paid and delivered to or had or received by him as hereinbefore stated and charged, and may be decreed to pay over and deliver to the said Credit Mobilier of America and to your orator such sums of money, stock, and shares and bonds as aforesaid as by such account shall appear to be justly due or belonging to the said corporation or to your orator, and to make such transfer of such shares and bonds as aforesaid as shall be necessary in order to fully protect the rights of the said corporation and of your orator in the premises;

And that the amounts so ascertained to be due as aforesaid be ad-

judged and decreed to be a lien and charge upon the shares in the capital stock of each of said corporations owned or held by or
22 standing in the name of the said Durant on the books of said corporations, respectively, and upon the contract assigned as aforesaid to the said defendants, trustees as aforesaid, and the dividends, earnings, stocks, and bonds received under the same, or to be received by virtue thereof to the extent of the shares thereof to which the said Durant may be entitled under said assignment; and that on default in the payment and delivery of the moneys, stock, and bonds so found due as aforesaid all such stock and bonds be sold under the direction of this honorable court, or otherwise transferred to and apportioned among the rightful owners and claimants thereof according to equity and good conscience; and that such stock, bonds, and moneys and interest and rights so procured by said Durant with the moneys of said corporation shall be deemed and taken to be the rightful property of said corporation; and that the said defendant, Durant, his agents and servants, be restrained from selling, assigning, transferring, pledging, or otherwise encumbering any stock or bonds in either of the said corporations owned or held by him or standing in his name on the books of either corporation, or received or held by the said defendants, trustees as aforesaid, for his use, or to be so received or held, or any right or interest in the contract assigned to said trustees as aforesaid, or any dividends on such stocks or bonds, whether in money, shares, or bonds or otherwise;

And that said Thomas C. Durant be enjoined from receiving or disposing of any dividends now or hereafter declared upon said shares of stock, and that the said defendant corporations be enjoined from paying over or delivering said dividends upon said shares of stock to said Thomas C. Durant, or upon his request, until the further order of this honorable court, whether said dividends be money, bonds, or stock or property of any kind;

And that the said defendant, Durant, be restrained from departing out of the State and out of the jurisdiction of the honorable court by writ of *ne exeat*, issued under the seal and by the order of this honorable court;

23 And that the said defendant corporations, their officers, agents, and servants, be restrained from suffering or permitting any shares or bonds so owned or held by or standing on the books of said corporations, respectively, in the name of the said Durant to be assigned, transferred, pledged, or otherwise encumbered, or any dividends to be paid thereon, whether in money, stock, or bonds or otherwise;

And that said defendants, trustees as aforesaid, be restrained from paying or delivering to or upon the order of the said Durant any dividends, earnings, shares, stock, or bonds by them held or to be held or received under the contract aforesaid assigned to them, or any pledge, transfer, or encumbrance of the same or any part thereof, or of any interest therein belonging to the said Durant or to which he may be or become entitled;

And that your orator may have such further or other relief as

the nature of his case may require and to your honors shall seem meet—

May it please your honors to grant unto your orator the writ of injunction of this honorable court, directed to the said defendants, commanding the said Durant, his agents and servants, to refrain from selling, assigning, transferring, pledging, or otherwise encumbering any stock or bonds of either of said corporations owned or held by him or standing in his name on the books of said corporations, respectively, or received or held or to be received or held by the said defendants, trustees as aforesaid, for his use, or any interest in the contract assigned to them by Oakes Ames as aforesaid, and from receiving any dividends thereon, whether in money, stock, or bonds or otherwise, to which he may be or may become entitled; and also commanding the said corporations, their officers, agents, and servants, to refrain from suffering any assignment, transfer, pledge, or other encumbrance of the stock or bonds of the said Durant as aforesaid, and from the payment of any dividends as aforesaid; and further commanding the said defendants,
24 trustees as aforesaid, to refrain from paying or delivering to or by order of the said Durant any dividends, earnings, stock, or bonds received or to be received under said Oakes Ames contract, or permitting any interest therein belonging to the said Durant or to which he may become entitled to be assigned or otherwise disposed of.

And also to grant unto your orator the writ of subpœna of this honorable court, directed to the said defendants, Thomas C. Durant, of Newport; Oliver Ames, of North Easton; Benjamin E. Bates and John Duff, of Boston, in the State of Massachusetts; Cornelius S. Bushnell, of New Haven, in the State of Connecticut; Sidney Dillon, of the city, county, and State of New York; Henry S. McComb, of Wilmington, in the State of Delaware, and the said Thomas C. Durant, trustees as hereinbefore stated; the Credit Mobilier of America, a corporation created under the laws of the State of Pennsylvania, and having a place of business in Philadelphia, in said State, and also in said New York; and the Union Pacific Railroad Company, a corporation created by acts of Congress, and having a place of business in said New York; and Rowland G. Hazard, of South Kingston, in Rhode Island, commanding them on a certain day to be and appear before this honorable court, then and there to answer the premises, and to stand to, perform, and abide such decree and order therein as to your honors shall seem meet.

ISAAC PEACE HAZARD.

NEWPORT, *sc:*

NEWPORT, *August* 22, 1868.

Then came the above-named Isaac P. Hazard and affirmed (on peril of the penalty of perjury) that the statements contained in the foregoing bill are true, and that those statements therein made on knowledge and belief are true to his best knowledge and belief.

Before me— FRANCIS B. PECKHAM, JR.,
Justice of the Peace.

25 *Motion for Leave to Amend Bill. Filed Feb'y 23d,* 1886.

The said complainant comes and moves for leave to amend the bill of complaint herein by inserting, on page 5 thereof, after the words "Rowland G. Hazard," the words "and that the said Rowland G. Hazard had notice of the application of the said receiver to the circuit court of the United State for the eastern district of Pennsylvania for authority to execute and deliver the said release to the said Durant, and also had notice that the said release had been delivered to the said Durant, pursuant to said authority, before the entering of the decree annexed to the declaration filed in said proceedings at law."

By his solicitor, SAM'L R. HONEY.

Decree on Motion for Leave to Amend. Filed March 23d, 1886.

In the above-entitled cause it is, this 23d day of March, A. D. 1866, on motion of the complainant, ordered, adjudged, and decreed that the motion of the complainant, heretofore made, to amend the
26 bill of complaint be granted, and that the bill of complaint be amended, as of the date when it was filed, by inserting, on page 5, after the words "Rowland G. Hazard," the following:

"And that the said Rowland G. Hazard had notice of the application of the receiver to the circuit court of the United States for the eastern district of Pennsylvania for authority to execute and deliver the said release to the said Durant, and also had notice that the said release had been delivered to the said Durant, pursuant to said authority, before the entering of the decree annexed to the declaration filed in said proceedings at law."

By the court:

HENRY PITMAN, *Clerk.*

March 23d, 1886.

27 *Demurrer. Filed Oct. 5th,* 1886.

These respondents by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for causes of demurrer show—

1. That it appears in and by said bill and by the records annexed to and made part of said bill that the release from the receiver of the Credit Mobilier of America to Thomas C. Durant, therein set forth, was executed and delivered on the 27th day of October, 1881, and that the decree in the suit of Isaac P. Hazard and others against the said Durant and others, in said bill mentioned, was entered on the 2d day of December, 1882, and that the supreme court of Rhode Island, by its judgment and decree therein, held and decided that said release was not a legal or equitable bar to the relief sought by the complainants in said last-named suit and rendered its decree in said suit in favor of the complainants therein notwithstanding said release, and thereby finally adjudicated and determined that said release was in-

valid and of no effect as against said complainants (being these respondents) nor as against said decree.

28 2. That it appears in and by said bill and by the records therein referred to and made a part thereof that in the said suit at law (referred to in said bill), pending in this court, wherein these respondents are plaintiffs and said complainant is defendant, the defendant therein, in his seventh plea, set up and pleaded said release in bar of said action, and that the validity of said release and the validity of said decree of the supreme court of Rhode Island, as affected by said release, were in issue in said suit at law between the parties to the present bill, and that it was finally adjudged and determined by this court therein that said release was no bar to said action at law, and that said decree of the supreme court of Rhode Island, notwithstanding said release, was final and conclusive as against said complainant.

3. That it appears in and by said bill and by the records therein referred to and made a part thereof that in the said suit at law (referred to in said bill) the defendant therein, in his seventh amended plea, set up and pleaded said release as a bar to said action, and that the validity of said release and the validity of said decree of the supreme court of Rhode Island as affected by said release were again put in issue and presented by said seventh amended plea, and that this court disallowed said plea and ordered the same to be stricken from the files, for the reason that said amended plea presented the same issues and defences as had been presented and passsed upon under said original pleas, and that this court again adjudged and determined, upon said amended pleas, that said release was no bar to said action at law, and that said decree of the supreme court of Rhode Island, notwithstanding said release, was final and conclusive as against said complainant.

4. That it appears in and by said bill that this court can only grant the relief sought therein by overruling the decision and annulling the judgment and decree of the supreme court of the State of Rhode Island in a suit in which it had complete and final jurisdiction as a court of equity of the subject-matter and of the parties to said decree.

5. That said complainant has not in and by said bill made or stated such a case as does or ought to entitle him to any such relief as is thereby sought and prayed for from and against these respondents, or to any relief whatever against these respondents.

29 Wherefore, and for divers other good causes of demurrer appearing in said bill, these respondents do demur thereto and to all the matters and things contained therein, and respectively demand the judgment of this court whether they shall be compelled to make any other or further answer to the same, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) ROWLAND HAZARD.
R. G. HAZARD.

The undersigned, of counsel for the respondents in said cause, certifies that in his opinion the foregoing demurrer is well founded in point of law.

(Signed) EDWIN METCALF.

The respondents in said cause, on affirmation, say that the foregoing demurrer is not interposed for delay.

ROWLAND HAZARD.
R. G. HAZARD.

STATE OF RHODE ISLAND, *Washington County*, } *sc.*:

SOUTH KINGSTON, *September 21st*, 1886.

Personally appeared Rowland Hazard and R. G. Hazard and, being duly affirmed, say that the foregoing statement by them signed is true.

Before me—

[L. S.] JOHN A. BROWN,
Notary Public.

[Endorsed:] 2136. Oct. 5, '85.

30 # 2136.

Opinion of the Court. Filed Sept. 10, 1886.

(Heard by Colt & Carpenter, JJ.)

CARPENTER, *J.*:

The respondents in this case, on March 3, 1883, commenced in the supreme court of the State of Rhode Island an action of debt on a bond, dated August 24, 1868, and executed by Thomas C. Durant, as principal, and the complainant and S. Dexter Bradford, as sureties, binding them jointly and severally to Rowland G. Hazard and others in the sum of $53,735, the condition of which is that Durant "shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, now pending in said court within and for the county of Newport." The breach assigned in the declaration is that Durant has not performed a decree by which that court, on December 2, 1882, ordered him to pay into its registry the sum of $16,071,659.97. After oyer prayed and granted the complainant filed 10 pleas in bar, and the case was removed on his petition into this court, where the respondents filed special demurrers to five of the pleas. These demurrers were
31 sustained in Hazard *vs.* Griswold, 21 Fed. Rep., 178.

The complainant now brings this bill in aid of his defence to that action, and in support of his prayer for an injunction he alleges that in the course of certain proceedings in the circuit court of the United States for the eastern district of Pennsylvania Oliver Ames was appointed receiver of the Credit Mobilier of America, and as such receiver was authorized to execute to said Durant a release

of all sums of money then due from him to the company and from all actions and demands whatsoever, and that on October 27, 1881, the said Ames executed and delivered such release to said Durant accordingly. He further alleges that Durant was not allowed to set up the release as a bar to the entering of a decree in the suit of Isaac P. Hazard *et al. vs.* Thomas C. Durant *et al.* because he was in contempt of that court for violation of one of its decrees rendered therein.

The respondents demur to this bill and assign as ground of demurrer that there is no equity in the bill, and that the validity of the release and the validity of the decree of the supreme court of Rhode Island as affected by the release were in issue in the action at law which is here sought to be enjoined, and were decided adversely to the claim of the complainant by the judgment on the demurrers.

The travel of the action at law, so far as it relates to this
32 question, was as follows: The seventh plea set up the release above described as a bar to the action, and to that plea the respondents demurred generally and specially, and the demurrers were sustained, as appears by the last paragraph of the opinion in Hazard *vs.* Griswold, above cited. The complainant then filed an amended plea, in which he set up the release "as a further and equitable plea in this behalf." The respondents moved to strike out this plea on the ground that the courts of the United States cannot entertain equitable defences to legal claims in actions at law, and the motion was granted and the amended plea was stricken out.

The complainant in this bill now argues that the effect of the judgment on the demurrer was only to determine that the seventh plea was bad as a legal defence to the action. We think he is right in this question. The judgment on the demurrer did not determine the validity of the release or of the judgment; it only determined that a plea alleging the release was a bad plea to that declaration; but in this bill the general demurrer raises the question whether the allegation of the release is a good, equitable defence to the action. On this question we think the authority of Hazard *vs.* Griswold is
in point. The strict question in that case, as we have already
33 said, was whether the release could be pleaded in an action at law; but the decision of that question was on the broader ground that the release could not be availed of in any way, except by pleading it in the supreme court of Rhode Island. We fully agree with the reasoning of the opinion and are disposed to follow it in deciding this case. The release, if it be valid, would have been a bar to any recovery against Durant. A recovery, however, was had against him, and the bond given by this complainant secures the payment of the amount recovered. We cannot hold that the release is a defence, either legal or equitable, to an action on the bond, unless we should hold that the decree of the supreme court of Rhode Island is invalid by reason of the existence of a fact which might have been availed of as a bar to any recovery. The decree was entered in pursuance of due process of law and must be held to be conclusive against any allegations which would have constituted

an effectual defence. Such, doubtless, would be the rule if the respondent had chosen not to make such allegations, and such, we think, is the rule, although the respondent, as in this case, was prevented from making the allegation as a consequence of his own misconduct.

The demurrer will be sustained.

34 *Final Decree. Filed Oct. 28th, 1886.*

This cause came on to be heard upon demurrer to the bill of complaint therein and was argued by counsel, and thereupon, on consideration thereof—

It is ordered, adjudged, and decreed that the said demurrer be sustained, and that the said bill of complaint be dismissed, and that the respondents recover from the complainant their costs of defense, be taxed by the clerk.

By the court:

HENRY PITMAN, *Clerk.*

Oct. 28th, 1886.

From which decree, on the 30th day of October, A. D. 1886, the complainant's counsel came into court and claimed an appeal to the Supreme Court of the United States at its next session; bond ordered to be filed within thirty days.

HENRY PITMAN, *Clerk.*

35 *Claim of Appeal. Filed Nov. 11th, 1886.*

The complainant in the above case, believing himself aggrieved by the final decree entered therein October 28th, 1886, and from which decree —, at the same term of said court, on the 30th of October, 1886, claimed an appeal in open court, prays that his appeal be allowed, and that a transcript of the record, proceedings, and pleadings in said cause, duly authenticated, may be sent to the Supreme Court.

By his solicitor, ARNOLD GREEN.

Allowed:

LE BARON B. COLT,
Circuit Judge.

Bond on Appeal. Filed Nov'r 11th, 1886.

Know all men by these presents that we, John N. A. Griswold, of the city of New York and State of New York, as principal, and Samuel R. Honey, of the city of Newport, in the State of
36 Rhode Island, and Edwin S. Burdick, of the city of Newport, in the State of Rhode Island, as sureties, are held and firmly bound unto Rowland G. Hazard & Rowland Hazard, both of South Kingston, in the State of Rhode Island, and Anna Hazard and Lydia Torry, both of Newport, in the State of Rhode Island, in the

sum of five hundred dollars, to be paid to the said Rowland G. and Rowland and Anna and Lydia, their *their* executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this eighth day of November, anno Domini eighteen hundred and eighty-six.

Whereas, at a circuit court of the United States holden at Providence, within and for the district of Rhode Island, by adjournment, on the 28th day of October, A. D. 1886, in a bill in equity depending in said court, wherein the said John N. A. Griswold was complainant and the said Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry were respondents, which said bill in equity was docketed in said circuit court as No. 2136, a decree was
37 rendered against the said John N. A. Griswold dismissing his bill of complaint, and the said John N. A. Griswold has appealed in open court from said decree to the Supreme Court of the United States, to be holden at Washington on the second Monday of October next after the date hereof:

Now, the condition of the above obligation is such that if said John N. A. Griswold shall prosecute said appeal with effect and answer all costs if he fail to make his plea good, the above obligation shall be void; otherwise shall remain in full force.

J. N. A. GRISWOLD. [SEAL.]
SAM'L R. HONEY. [SEAL.]
EDWIN S. BURDICK. [SEAL.]

Signed & sealed in presence of—
CHARLES K. KÖHNE, JR.

Approved:
LE BARON B. COLT,
Circuit Judge.

STATE OF RHODE ISLAND, } *sc:*
Newport, }

We, Samuel R. Honey and Edwin S. Burdick, who are mentioned in the foregoing obligation as sureties, being severally duly
38 sworn, on oath depose and say that we are severally possessed of estate and property of the value of fifteen hundred dollars over and above the liabilities and debts of each of us.

SAM'L R. HONEY.
EDWIN S. BURDICK.

Sworn and subscribed to this 10th day of November, 1886, before me—

WALTER B. SIMMONS,
Notary Public.

UNITED STATES OF AMERICA, }
District of Rhode Island, } ss:

CLERK'S OFFICE, U. S. CIRCUIT COURT,
AT PROVIDENCE, *March 4th*, 1887.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the above and foregoing thirty-eight pages contain a true transcript of the record of the cause in equity, No. 2136, John N. A. Griswold *vs.* Rowland G. Hazard *et al.*, and of all the proceedings therein.

Seal of Circuit Court, Rhode Island.

In testimony whereof I have hereunto set the seal of said court and my hand this 4th day of March, A. D. 1887.

HENRY PITMAN, *Clerk.*

39 The United States of America to Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of March next, pursuant to a claim and allowance of appeal filed in the clerk's office of the circuit court of the United States for the district of Rhode Island, wherein John N. A. Griswold is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said claim of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Horace Gray, associate justice of the Supreme Court of the United States, this thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-seven.

HORACE GRAY,
Justice S. C. U. S.

40 The appellees aforesaid acknowledge legal service of this citation.

By their solicitor, EDWIN METCALF.

Providence, R. I., December 27, 1887.

[Endorsed:] Sup. Court U. S. 1887, Oct. term. No. 964. Jno. N. A. Griswold, app't, *vs.* Rowland G. Hazard & *al.* Citation & admission of service.

[Stamped:] Office Supreme Court U. S. Filed Jan. 3, 1888. James H. McKenney, clerk.

On this — day of ——, in the year of our Lord one thousand eight hundred and eighty—, personally appeared —— —— before

me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

Endorsed on cover: Rhode Island C. C. U. S. No. 627. John N. A. Griswold, appellant, *vs.* Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry. Filed June 22, 1887.

UNITED STATES OF AMERICA:

Supreme Court. October Term, A. D. 1889.

JOHN N. A. GRISWOLD, Appellant,
vs.
ROWLAND G. HAZARD *et al.* } No. 341.

It is stipulated in the above-entitled cause that the record in the cause John N. A. Griswold, plaintiff in error, *vs.* Rowland Hazard *et al.* (No. 343 on the calendar of this Court), so far as competent and material, may be considered and referred to as part of the record in said cause No. 341.

SAM'L R. HONEY,
Compl't's Solicitor.
ELIAS MERWIN,
Solicitor & of Counsel with Respondents.

[Endorsed:] Supreme Court U. S. 1889, Oct. term. No. 341. Jno. N. A. Griswold, app't, *vs.* Rowland G. Hazard & *al.* Stipulation as to use of record in No. 343 in this case.

[Stamped:] Office Supreme Court U. S. Filed Apr. 1, 1890. James H. McKenney, clerk.

Office Supreme Court U.S.
FILED
APR 22 1891
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 51.

JOHN N. A. GRISWOLD, APPELLANT,

vs.

ROWLAND G. HAZARD ET AL.

The bill in this suit, which was dismissed by the court below upon demurrer, was filed to enjoin the prosecution of the suit at law (No. 53), on the ground that a receiver of the Credit Mobilier Corporation, acting pursuant to authority conferred by an order of the Pennsylvania tribunal, which appointed him, had released Durant from all liabilities, including that on the bond in question.

Inasmuch as this release was delivered prior to the judgment in the suit in the supreme court of Rhode Island in which the *ne exeat* issued, it was available in that suit. It would appear that the court last mentioned refused leave to interpose it as a defense upon the ground that Durant was in contempt.

If this decision was erroneous the undersigned is not able to perceive that the error can be corrected by bill in equity filed by the sureties on the bond, and therefore makes no brief in the case; but as learned counsel have thought otherwise, he submits the case with the prayer that if the court should deem the bill well founded the appellant may have the benefit of his appeal.

JAMES C. CARTER,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED,
APR 1 1891
JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 51

JOHN N. A. GRISWOLD, *Appellant*,

v.

ROWLAND G. HAZARD *et al.*

BRIEF FOR RESPONDENTS.

STATEMENT.

This is a bill in equity brought by Griswold, in United States Circuit Court, Rhode Island, wherein the plaintiff sets forth the action at law brought against him by these respondents upon the bond signed by him as surety of Durant, being the suit at law in the record No. , and also sets up the suit in equity of Hazard *et al. v.* Durant, in the Supreme Court of Rhode Island. It also sets forth that the receiver appointed in the Pennsylvania suit of Hazard *v.* The Credit Mobilier of America, delivered to said Durant a deed of release from all claims in behalf of the said Credit Mobilier against said Durant; that the said Supreme Court of Rhode Island refused to allow the said Durant to set up the said deed of release as any bar to a decree in that case, and, notwithstanding the said release, rendered a decree in favor of the complainants therein, which is the decree relied on in the plaintiffs declaration in said suit at law; and that the plaintiff's in said suit at law are pursuing said suit, notwithstanding said release; and the bill prays that the said bond may be delivered up to the orator, and respondents be restrained from proceeding with their action at law, or from

enforcing said bond in any manner. The bill prayed that all the proceedings had in said suit at law may be taken and considered as part of the bill, and a copy of the bill in equity of Hazard *et al. v.* Durant *et al.* in the Supreme Court of Rhode Island is also annexed and made a part of the bill.

The defendants demurred to the bill, for the following causes: —

First. That the release in question was made Oct. 27, 1881, while the decree of the Supreme Court in Hazard *v.* Durant was not rendered until Dec. 2, 1882; that that Court, as appears by the bill, held that said release was no bar to the relief sought in that case, and was invalid, and of no effect as against the complainants therein (these respondents), or as against said decree.

Second. That the said United States Circuit Court had already adjudicated in the action at law referred to in and made a part of said bill that said release pleaded therein was no bar to the said action at law, and that said decree of the Supreme Court of Rhode Island was, notwithstanding said release, binding on this complainant (Griswold, the defendant in said action at law).

Third. That the same adjudication had also been made by said United States Circuit Court upon the amended plea, again setting up said release in bar of said action.

Fourth. That the relief sought by this bill could only be granted by annulling the final judgment of said Supreme Court of Rhode Island in a suit of which it had complete jurisdiction, both as to the subject matter and the parties, and in reference to matter upon which, as this bill shows, it had specially adjudicated.

Fifth. That the bill stated no ground whatever for relief.

Upon argument before Colt and Carpenter, JJ, the demurrer was sustained and the bill was dismissed. The opinion of the Court is in the Record, page 17.

Bill without Equity.

This bill is entirely without any equity, for the following reasons: —

1. If the release which it sets up as the only ground for the relief asked for was of any validity, it constituted a legal and perfect defence to the action at law upon the bond then pending in the same court between the same parties, and therefore there was no necessity nor excuse for resorting to a court of equity to enable the defendant in said suit at law (this appellant) to set up such legal defence. No reason whatever is suggested in the bill why such release, if available at all, was not available as a defence in the suit at law. It is too well settled for discussion that a Court of Chancery will never enjoin or interfere with a pending suit at law when the matter set up constitutes (if true) a good defence at law and can be availed of as a defence in such pending suit:

Insurance Co. *v.* Bailey, 13 Wall. 616, 621.
Balance *v.* Forsyth, 24 How. 183.
Lee *v.* Lancashire, etc., R. R. 6 Ch. Ap. 527.
Fuller *v.* Cadwell, 6 Allen, 503.
Anthony *v.* Balantyne, 130 Mass. 119.

2. The precise question sought to be raised by the bill, namely, the efficacy of this release, as a defence to the action at law upon the bond in question, was raised by the defendants' seventh plea therein, and the plaintiff's demurrer to said plea, and was decided by Mr. Justice Gray, viz.: that said release did not constitute any defence to the decree upon which said action was based. "All the proceedings" in that suit at law are referred to, and made a part of the present bill (Record, page 1.)

It thus appears that the very question sought to be raised by this bill had been already adjudicated and passed upon in the suit referred to.

Cromwell *v.* Co. Sac., 94 U. S. 353.
Stout *v.* Lye, 103 U. S. 66.

3. The reasons in support of the decision of Mr. Justice Gray and for impugning said release as any defence to the bond in question are fully set forth in the brief of the respondents in the case No. , Griswold, Plaintiff in Error, *v.* These Respondents (pp. 15 to 18), and the respondents respectfully refer thereto.

4. This bill affirmatively shows that the release in question was attempted to be set up by Durant as a defence to the said suit of Hazard and others against him and others in the said Supreme Court of Rhode Island, and that that Court refused to give it any effect, and passed the decree in question, notwithstanding the existence of such release (Bill, Record, pp. 2, 3).

It thus affirmatively appears that the very matter which the plaintiff Griswold attempts by this bill to set up as an answer to the decree of the Supreme Court of Rhode Island was the very matter which that Court determined constituted no defence to such decree.,

This bill, therefore, is a bald attempt to ask a Court of the United States to disregard the final decree of a State Court having full jurisdiction of the subject matter, on the mere suggestion that their decision was erroneous in point of law. This would be to disregard the Constitution of the United States, Article IV, Sect. 1, which provides that "full faith and credit shall be given in each State to the published acts, records and judicial proceedings of every other State."

It has been repeatedly settled by this Court that, "if a

judgment is conclusive in the State where it is pronounced, it is equally conclusive everywhere in the States of the Union."

McElmoyle *v.* Cohen, 13 Peters, 326.
Mills *v.* Duryea, 7 Cranch, 481.
Hampton *v.* Wheaton, 234.
Story's Commentaries, 183.

It is well settled that a court of equity will never entertain a bill to set aside, review or retry a decree or judgment of another court of competent jurisdiction on the ground that such decree or judgment was erroneous in law. It treats it, and must treat it, as *res adjudicata*. A court will interfere only where the party has been prevented from presenting his case or defence by some mistake "unmixed with negligence," or by the fraud of the other party.

U. S. *v.* Throckmorton, 98 U. S. 61, 65, 66.
White *v.* Crow, 110 U. S. 183, 189.
Cooper *v.* Reynolds, 10 Wall. 308, 316, 317.
Cornett *v.* Williams, 20 Wall. 308, 316, 317.
Bateman *v.* Willoe, 1 Sch. & Lef. 204, 205, 206.
Castrique *v.* Inrie, L. R. H. L. 414.
Godard *v.* Gray, L. R. 6 Q. B. 139.

5. It is perfectly clear, therefore, that the release in question can constitute no defence to the said decree of the Supreme Court of Rhode Island, and this proposition is just as true against Griswold, the surety on the bond, as it is against Durant, who was the principal against whom said decree was rendered.

It is well settled that, in the absence of fraud or collusion, a judgment or decree against the principal is conclusive in an action against bail or surety to recover such judgment;